Supreme Court, U.S.
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No.

IN THE
SUPREME COURT of the UNITED STATES

OCTOBER TERM 1997

RICHARD BOLT MD
RICHARD BOLT MD PA *Petitioner,*

vs.

DAYTONA COMMUNITY HOSPITAL
ORMOND BEACH MEMORIAL HOSPITAL
RICHARD BOYE,MD
RALPH MARINO,MD
SHED ROBERSON,MD
ALVIN SMITH, MD *Respondents,*

On Petition For Writ Of Certiorari
To The UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Richard Bolt MD
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49 pp

QUESTIONS PRESENTED FOR REVIEW

1. **Is it a denial of due process for a district judge to terminate a proceeding and force an involuntary settlement by coercing trial counsel to abruptly withdraw mid-trial, contrary to the written rules of the court and the various bar associations, while also denying any further attempts to proceed ?**

LIST OF PARTIES

PETITIONER

RICHARD A. BOLT, MD,
RICHARD A. BOLT, MD, P.A.

RESPONDENTS

RICHARD BOYE, MD
RALPH MARINO, MD
SHED ROBERSON, MD
ALVIN SMITH, MD

ORMOND BEACH MEMORIAL HOSPITAL

DAYTONA COMMUNITY HOSPITAL, a/k/a DAYTONA HUMANA, a/k/a DAYTONA COLUMBIA

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CITATIONS OF OPINIONS AND ORDER

The memoranda of the United States district court denying Dr. Bolt's request for a new trial pursuant to Rule 60(b) (4) and/or (6) are reprinted as Appendix A. The judgment and orders of the Eleventh Circuit Court denying a petition for rehearing are reprinted as Appendix B.

JURISDICTION

The Eleventh Circuit has inexplicably and silently sanctioned clear and gross departure from its own fundamentally important written rules governing the conduct and relationship of judges and lawyers that are designed to insure the right to be heard. If allowed to stand, it will encourage similarly expedient, but equally improper, conduct by other overburdened courts as an easy method of case disposition. It will also redefine, sub-silentio, our standards defining rational, fair and impartial adjudication and cast further doubt about the integrity of the bench . This great departure from the accepted and usual course of proceedings calls for an exercise of the supervisory power of the Supreme Court pursuant to its Rule 10 .

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be ... deprived of life,
> liberty or property, without due process of law...

STATEMENT OF THE CASE

Dr. Richard Bolt filed the underlying case in 1982 alleging that the simultaneous and coordinated denial of his surgical privileges at all three hospitals in the Daytona Beach, Fl. market was a violation of section 1 of the Sherman Act, 15 USC. In light most favoring Dr. Bolt, he faced a retaliatory boycott resulting from his appropriate peer review questions regarding fatally substandard care at the hands of influential physicians who also controlled the reappointment process. The market injury is the chilling effect this conduct has on unfettered peer review[1], which is encouraged and protected by the Health Care Quality Improvement Act of 1986[2] and articulated as pro-competitive by the Eleventh Circuit in Bryan v. Holmes Med Cntr., 33 F.3d, 1318 (1994).

Trial was initially held in 1984 before visiting Senior Judge Richard Kellam who entered a directed verdict for the defense after one day of trial.. Calling this "unfortunate", it was twice reversed by the Eleventh Circuit, including the *en banc* court; denied certiorari by this Court; inexplicably reached yet another panel of the

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[1] The defendants conduct, i.e., the fear of "being Bolted" has served as an effective gag clause for physicians that hinders peer review at the hospital level as well as in managed care agreements and other areas of the market.

[2] H.R.Rep. No.903, 99th Cong. 2d sess.2, reprinted in 1986 U.S.C.C.A.N. 6287,6384.

Eleventh Circuit[3] and finally set for re-trial in August of 1994.

The trial judge personally conducted unsuccessful mediation efforts in 1994. Thereafter, he began trial by announcing his displeasure that Dr. Bolt had rejected his efforts, complained that he was overworked, loathe to try the case, and promised that it was Dr. Bolt's last chance and it would be quickly finished with finality. He complained that Dr. Bolt's case was unfair to the system as it was "too old" (trial transcript pg.3,line 24; pg.6,line 6; pg.122,line 15) and that his attorneys were unprepared, dilatory, dishonest and untrustworthy. On the second day he imposed exorbitant fines on Dr. Bolt and his attorneys because of a perplexing claim that they should have prepared the **defendants** (*underlined for emphasis*) for more expedient testimony (trial transcript, pg.627,line 25). He made light of Dr. Bolt's witnesses , encouraging the jury to ignore them as boring (pg. 573-575; pg.707,line 10), while also admitting that he made evidentiary rulings adverse to Dr. Bolt out of angry retaliation toward his lawyers because they "had double banked him" (pg. 717,line 9).

Agreement that this unfortunate conduct was unduly prejudicial is not the issue. Importance lies in understanding that it was a prelude designed to facilitate more egregious judicial activism. Although the overbearing conduct was demoralizing to Dr. Bolt's

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[3] *see* Bolt v. Halifax Hospital Medical Center, 851 F.2d 128; 874 F.2d 755; 891 F.2d 810,(11th Cir.), cert. denied 495 U.S. 924, 110 S.Ct. 1960, 109 L. Ed. 2d 332 (1990); 980 F. 2d 1381.

attorneys, it was by design coupled with secretive judicial requests encouraging Dr. Bolt's attorneys to simply quit. Judge Merhige admits he repeatedly did so starting on the first day and continuing to the last day of trial:

> "While you are here ,now, I never give up, you know. Did you give any consideration to what I said yesterday....I said, do you think it would do any good to talk to your client ? I was a little stronger than that." (trial transcript, pg.945)

In response to this last entreaty, Dr. Bolt's attorneys capitulated. At the same bench conference their agreement to withdraw was then immediately announced to the defendants , but not to Dr. Bolt. That this judicial orchestration to withdraw was understood by all at bench, and considered extraordinary after twelve years of effort, is evinced by the incredulity of the defense in their response to the court:

> I have never been under the appreciation that the plaintiff's side of the case, that they would go away for less than a payment by us. (trial transcript, pg. 945)

At a discussion in chambers that immediately followed, Dr. Bolt's attorneys abruptly and formally moved to withdraw claiming it was futile to go forward

(pg.949).[4] The court announced this, on the record, to the opposition. The Local Rules of the Middle District of Florida, the Model Rules of the A.B.A., and the Florida Bar strongly and clearly prohibit such abrupt withdrawal and are well understood by lawyers and judges alike. As a group they chose to ignore their professional obligation to uphold the rules.

The Canons of the Federal Judiciary[5] mandate that Judges monitor and prevent such attorney conduct rather than encourage it. That this withdrawal was a crafty and conscious judicial attempt to terminate the proceeding with the finality it promised at the outset of trial (trial transcript, page 3) is demonstrated by the imaginative ruling that followed. The court realized that to allow the attorneys to simply leave would have forced a mistrial and a new trial. Attempting to insure finality, the court facilitated a substantively complete withdrawal by encouraging the lawyers to remain but not argue. It

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[4] This conference followed the inadvertent mention that Dr. Bolt's malpractice insurer had canceled his policy as it was funding a cost of defense in the case at bar. This was harmless error for at least two reasons. Inadvertent mention of insurance is rarely grounds for mistrial, *see* Rios v. bigler,67 F.3d 1543 (10th Cir.)1996; secondly the defendants waived any claim by refusing curative instruction, *see* Robinson v. Audi Nsu Auto 739 F.2d 1481(10thCir. 1984); *see also* United States v. Perez 30 F.3d 1407 (11th Cir.)1990

[5] GUIDES TO JUDICIARY POLICIES AND PROCEDURES, Code of Conduct for Judges and Judicial Employees

preserved the appearance of a correct proceeding by signaling Dr. Bolt that if he refused to accept a forced settlement, and attempted to continue, he was not going to be heard:

> I want to go home. I have got to go home. .....if we are not going to get it disposed of I will make the lawyers stay..... I won't insist on you making an argument because if you can't in good conscience, fine. But I will meet that when we come to it (trial transcript pg. 955, line 1-11)

Regardless of any fraternal claims, excuses, explanations, rationalizations or ingenious defenses made by other lawyers and/or judges, it can not be denied that to Dr. Bolt, and other lay people, this was a judicial demand that he either quit then or accept a charade of insincere and muted representation and lose later. The court's denial of Dr. Bolt's attempt to go forward in proper person further reveals its unhidden and sadly self serving desire to abort the proceeding :

> he is talking about acting pro se. I am not going to let him....(because) we will be here three weeks.(pg. 959,ln.16)

Dr. Bolt, having had his well-paid adversarial representatives purloined by the court, was forced to concede defeat and accept a forced and involuntary settlement. The trial judge entered an order dismissing the case with prejudice. Dr. Bolt immediately requested his attorneys seek post trial relief and they refused claiming

that no recourse was available. Unknowingly, he then filed a procedurally incorrect pro se appeal with the Eleventh Circuit which was denied for lack of jurisdiction on February 5, 1995.

At about this same time, Dr. Bolt was at last able to compel an explanation about events from his trial attorneys . In sworn deposition testimony they admitted their futility, and resultant withdrawal, arose because the trial judge indicated he was irrevocable prejudiced towards Dr. Bolt. This surprising disclosure prompted Dr. Bolt to request and review the entire trial transcript wherein Dr. Bolt became first fully aware of the above described judicial conduct. This awareness prompted an immediate pro- se request for a new trial filed with the trial court, under subsection 4 and 6 of Rule 60b, which was denied on 10/21/96 . An appeal was made in timely fashion to the Eleventh Circuit on April 1, 1997 and denied on October 27,1997. A request for rehearing was denied on May 12, 1998.

REASONS FOR GRANTING THE WRIT

PREFACE

The history of Rule 60 b(4) and (6) gives the courts great latitude in correcting any wrong, particularly for extraordinary cases that merit relief for any other reason. The time limit elapses only if at some point the petitioner elects not to move, Klapprott v. U.S., 335 U.S. 601, 69 S.Ct. 384 (1949) ;United States v.

Karahalis, 205 F. 2d, 331 . Dr. Bolt has been continuous in attempts for relief.

The extraordinary nature of this case is the absolute necessity to correct grossly improper techniques of judicial management that are a clear departure from usual and accepted adjudicatory procedure . It also is a long overdue opportunity for this Court to demonstrate, by example, that intellectually honest peer review in both the judicial and medical profession, although often distasteful, is a necessary obligation .

I. THE OPPORTUNITY TO DEMONSTRATE THAT THE COURTS ARE WILLING TO PROTECT MEDICAL PEER REVIEW AS MANDATED BY THE HEALTH CARE QUALTIY IMPROVEMENT ACT

The Health Care Quality Improvement Act of 1986 was meant to improve the quality of the healthcare product by encouraging intellectually honest peer review by protecting all peer reviewers from retribution. The courts have seemingly interpreted this as one sided, to only protect hospitals and their peer review committee members from retaliatory law suits. Hospitals largely abdicate their responsibility for peer review to the medical staff. These positions are then largely handed from partner to partner, friend to friend. There is little necessary correlation between patient skills and these appointments at the community hospital level. The presumption that these same physicians deal fairly with

competitors is not always correct. HCQIA anticipated the need to balance the unregulated power of the hospital, and these committees, but the courts have largely demonstrated unwillingness to do so. As a result the physicians who control the committee structure have increasingly recognized they are largely immune from scrutiny and that bad faith peer review can be used in anti-competitive fashion to punish those who express concern or criticism in the name of patient care towards them and/or the hospital.

Peer review committees rarely, or selectively, deal with substandard care and this case illustrates what now is factually confirmed by hard research. It has long been suspected that the best peer review of physicians is done by tort lawyers. A high profile malpractice case serves not only as a teaching tool but also an impetus to better performance. Recent government sponsored studies confirm that medical peer review is, as congress suspected, at best incomplete. These studies indicate that about 4% of hospitalized patients suffer an in hospital injury, one forth of which are clearly identified as a negligent medical injury. In real figures this study estimates that over 150,000 iatrogenic fatalities occur each year, more than half of which are due to negligence. Medical injury, in hospitals alone, accounts for more deaths than all other types of accidents combined and dwarfs the mortality rates associated with motor vehicle accidents (50,000 deaths per year). Not only is medical negligence more common than we think, the same government supported study also revealed that it was ignored or unrecognized by hospitals and physicians alike and consequently unrecognized by patients. This

extensive study , sponsored by the State of New York,to determine why there was a crises in malpractice premiums concluded that the real tort crises is in too *few* claims being filed[6]. Rarely however do physicians lose their hospital privileges because of incompetence and it is even rarer that the incompetent physician approaches the court for redress. On the contrary the physicians in most staff privilege cases seek intervention because the charges used to terminate their career are non patient care related. The defendants in this case[7] admit that Dr. Bolt was competent and complain that his deficiency was that he was overly critical of their own substandard performance. Moreover as expert witnesses testified at trial, the defendant physicians were not only guilty of negligent homicide in the care of these patients but they also "white washed" their own willful negligence.[8] This case is a precise representation of the congressional fear that peer review in medicine is lacking and now confirmed by hard research.

Peer review has perversely become more directed towards suppressing the role of physicians as quality-brokers for their patients. Demanding and

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[6] A MEASURE OF MALPRACTICE, Weiler,Hiatt,Newhouse,Johnson,Brennan & Leape, Harvard University Press 1993

[7] Dr. Bolt has faced a moving target of charges from the defense attorneys. The trial judge got their concession at mediation that Dr. Bolt's competence was not an issue and their clients have conceded on the record that such is the case.

[8] ibid

uncompromising concerns for patient care, although attractive attributes in partners or friends (and in your own personal physician), are often portrayed as abrasive disruption in competitors or enemies. Disruption is the most troublesome and frequently emerging part of the lexicon in the developing field of staff privilege disputes. A physician may see an incompetent and uncaring nurse as a danger to his patient while a hospital administrator, desperate to fill a nursing staff shortage or meet a bottom line projection, is annoyed that the physician would complain to him or to the nurse. Although no one can define the category of disruptive physician, the allegation alone is seemingly accepted as quickly as a knee jerk reflex by most courts , and with as much thought. It is a term used to pull the wool over the eyes of an indolent or overworked judiciary. The term "disruptive physician" needs be done away in exchange for the more established and objective terms used to describe patient care results. If behavior can be shown to injure patients it should be called negligence. If not, is it little more than demands for excellence ? If behavior can not be shown to impact clinical care, the hospital side of the medical services business should be required to clearly show an interference with business advantage. It should not be blindly accepted by the courts as a presumption to discharge a physician without significant proof of an irreparable working relationship. Patients are grateful that their physician will not tolerate the indifference of other health care workers. The patients reliance upon their physician to recommend one hospital over another assumes that the same diligence of concern will continue for the patient while in the hospital. The relationship of

physicians as a "hospital services broker" for the patient may be more important than requiring physicians to be blindly loyal employee of the hospital and need be looked at more closely than the courts have demonstrated heretofore.

The overwhelming perception shared by lawyers, health care workers and judges that courts blindly favor hospitals has allowed the HCQIA legislation to do precisely the opposite of what was intended by legislators. In the current climate of judicial apathy this perception, instead of encouraging debate, heightens the risk of indefensible retaliatory danger for physicians who express critical concerns about the quality of hospital services or of the practice patterns of the physicians (and their partners, friends and colleagues) who hold positions of power by virtue of committee appointment. Those in positions of appointed power serve as quasi-employees of the hospital and in gratitude frequently agree with the hospital that a concerned physician might one day become a dangerous finger pointer or perhaps even an adverse witness against them the next. Again the loyalty of the physician should be towards the patient first and he should not be punished for this priority. This symbiotic relationship between the hospital and its appointees rewards those on the inside at the expense of others, as it suppresses the critical dialogue that the legislature desires as a pro-competitive effort at quality. Peer review has been stifled because the courts seemingly hold that HCQIA is there to solely protect the increasingly dominant market force of the hospital. In theory HCQIA should also protect the independent physician who serves as a hospital services broker for the patient. In the role of

broker it is necessary to have the ability to bargain and demand quality for the client-patient without the fear of retaliatory boycott.

In order to strengthen peer review the courts need show protection for both the hospital services side of the patient care market, and its peer review agents, as well as independent physicians. The courts need overcome the perception that they interpret HCQIA only for the protection of the hospital by encouraging the high profile resolution of cases such as the one at hand, where there is clear evidence of wrong doing on the hospital, hospital peer review committee or any combination. Although HCQIA was designed for the protection of all, one is hard pressed to cite a case where the courts have found hospitals to have been acting in bad faith or even allowed a case to go forward without undue duress and difficulty on the part of the physician plaintiff. The instant case meets the unusual burden for relief as it is extraordinary and quite simply the only medical staff privilege case brought before the federal courts where a competent physician has been thrown out by less competent physicians and who are willing to admit that they do so precisely in order to avoid peer review criticism of themselves. They find Dr. Bolt's peer review actions to be overly harsh and unduly competitive and deserving of exclusion from the entire national market in spite of no claims of negligence or adverse action by any licensing board towards Dr. Bolt. The unequal harshness of their response highlights the great benefit to those in hospital committee power of a one sided HCQIA application. This case, now clearly the oldest struggle on record of a

physician seeking a fair hearing, is illustrative of the real resistance in the courts to the plight of patient advocates. Dr. Bolt's unsuccessful efforts at reaching a jury in over a decade and one half has also done precisely the opposite of opening up peer review. Defendant Smith, as President of the Florida Medical Association, has undoubtedly used this case to demonstrate the value of tyranny as a counter to intellectual honesty. As such it deserves consideration for unusual relief.

The unusual case at hand is valuable as it contains inarguable examples of bad faith on the part of the hospital defendants and illustrates the dangerous combination that can occur between self serving hospitals and physicians, again as anticipated by HCQIA but seemingly ignored or unrealized by the courts. The refusal of one of the hospitals to provide any hearing (Memorial Ormond Beach), and of the others a complete hearing, are sufficient alone to negate their presumed immunity. Horrifically, even criminal conduct on the part of the hospitals was ignored by the lower courts. Dr. Bolt faced a boycott after exposing not only the substandard care of influential physician, but also the efforts of the hospitals in suborning admitted perjury from its board members in attempts to suppress discovery of this fatal negligence. One board member circulated self initiated sworn statements, revalidated and re-circulated their authenticity in sworn deposition testimony, and only much later admitted it was fabrication, and knew it to be so earlier, when called to the stand at the trial in 1984. The perjured testimony from this board member had been solicited by a physician defendant (Smith) in order to deflect criticism towards himself and the hospital. This

vertical boycott between the hospital board and influential physicians designed to eliminate a horizontal competitor fits squarely into classic anti-trust law dating to the turn of the century, see Radiant Burners. This disclosure of admitted perjury was greeted with a yawn by the courts. Similarly, illicit drug use on the part of the defendants(Dr. Roberson) were suppressed by the trial court in 1994. They were fearful Dr.Bolt would expose their use of these drugs obtained from the hospital. Their fifth amendment responses obtained in discovery were not allowed because the judge angrily felt he had been "double banked." (infra)

The reluctance of the 1984 district court to allow expert testimony regarding the substandard care of the defendants and the validity of Dr. Bolt's peer review concerns, resulted in a decade long debate by the Eleventh Circuit. In spite of the careful decision to admit this, the 1994 trial judge reacted with anger towards Dr. Bolt and his attorneys claiming they had "double-banked" him. This is illustrative of the seemingly steadfast reluctance of the courts to monitor the quality aspects of the peer review process in medicine. Although the common sense importance of protecting intellectually honest peer review as a pro-competitive assurance of quality is now formally required by the HCQIA of 1986, it requires the cooperation of all three branches of government in order to be effective. Until the courts decide to assume their responsibility, the hospitals and hospital based peer reviewers can intimidate others into silence. The development of worrisome and objectionable formal "gag clauses" preventing physicians from candidly disclosing risk/ benefit and alternative therapies to

patients is a natural progression of the dominance of the big business side of the medical services market over the independent "patient-advocate" physician . This case is truly extraordinary in that it raises concerns that have never been considered, and probably not understood, by most courts. Relief would serve as a long overdue message that the value of quality peer review is clearly understood and protected by the judiciary and that balance between the divergent parts of the health care services market need be encouraged by a fair application of the law.

II. THE OPPORTUNITY TO DEFINE PROPER JUDICIAL ACTIVISM

In his year end report, Chief Justice Rehnquest has expressed formal concern that the "quality of Justice" might be threatened by the disproportion between the number of judicial vacancies and a resulting overburdened docket. This request for unusual relief will measure the validity of the Courts concern for these words and the quality of the product it supervises. The eager and profound departures from accepted standards by the trial judge are so grievous and apparent , and the silence of the Eleventh Circuit so thundering, that it should be spontaneously compelling for this Court to either explain or reject this new judeocracy.

Few districts are more overburdened than the Middle District of Florida. In explaining why federal judges are available only part time in Jacksonville and Orlando, Chief Judge Hon. Elizabeth Kovachevech,

admitted that her district is "in crises and judges are falling further behind."[9] Judicial management in the Middle District of Florida, and in most other districts will be increasingly relied upon to control an overburdened docket. To insure the quality of our judicial system, and validate the concern expressed by the Chief Justice, the higher courts need define boundaries and guidelines of judicial activism that conform to the written rules and ethics of the courts and substantively to a competent and fair adversarial process. Boundaries need be established by speaking out against grossly improper judicial management as illustrated by this case. A judge who would manipulate two well trained lawyers, members of the bar of this Court, into abandoning their client mid trial has disregard for our adversarial system. Although it is hard to determine how long, or frequent, such abuse of power has existed, it should be even harder to allow it to continue.

It is no coincidence that the trial judge whose conduct is at the center of this appeal has drawn attention from scholars for being overly active :

> Judge Merhige takes pride in describing his innovative and unusual methods to reach settlement. Even some of his most ardent supporters admit that some of his finest hours are not necessarily in the opinions he has written but rather his methods of judicial management. Not everyone feels that such an activist role

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[9] THE FLORIDA TIMES UNION, 11/4/97

> is appropriate for a judge. Judge Merhige and his supporters admit that some people feel he oversteps the bounds of his judgeship but 'that there's a difference between helping the parties settle a case and moving in and taking the case away from the lawyers.' The important distinction according to him is not to take the case away from the lawyers. "Judges can't settle cases," says Judge Merhige. "I'm not worried about someone saying, 'He forced us to settle.' Good lawyers can't be forced to do anything."[10]

The trial record shows that Judge Merhige violated his own guidelines by taking the case away from the lawyers by forcing and encouraging them to simply, and suddenly, quit. This occurred in flagrant disregard for the most basic aspects of adversarial representation required by the Local Rules of the Middle District of Florida, the Rules of the Eleventh Circuit and this Court, and the Canons of the Judiciary as well as the Model Rules of the ABA and the various other Bar Associations.

Of equal, or even greater, concern is Judge Merhige's near sinister attempts to avoid review. Legal scholars have anticipated and warned that overly active

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[10] Couric, Judge Robert R. Merhige,Jr., Nat'l. L.J., Aug.4, 1986, p.1 col.1, as cited by Riskin and Westbrook, Dispute Resolution and Lawyers. abridged edition, West Publishing Co., 1987, pg. 112

judges are vulnerable to this dangerous narcissism . The trial judge had articulated his desire to finish this case quickly and with finality at the beginning of trial(supra). He was aware that the Eleventh circuit, in reviewing the 1984 directed verdict, had indicated sufficient evidence existed to allow this to reach a jury. Nevertheless he attempted to force a verdict by the overbearing conduct and passive solicitations described above. His attempts to avoid review prompted his crafty attempts to create the appearance of a complete record by suggesting the lawyers stay but not argue(supra). The appearance of an unforced settlement created by his manipulations, coupled with delays created by the pro se litigants confusion arising from the abandonment have effectively served to shield his actions from review. This conduct is particularly pernicious:

> Judicial management may be teaching judges to value their statistics, such as the number of case dispositions, more than they value the quality of their dispositions. Because managerial judging is less visible and usually unreviewable, it gives trial courts more authority and at the same time provides litigants with fewer procedural safeguards to protect them from abuse of that authority. In short, managerial judging may be redefining sub silentio our standards of what constitutes rational, fair, and impartial

adjudication.[11]

The validity of this Court's concern for judicial quality, as articulated by the Chief Justice, is tested by this request for relief. The conduct of the trial judge can not be condoned and to do so questions the validity of your concern. This case presents a near obligatory opportunity to set parameters of propriety for judicial management. If ignored by higher courts it will be emulated by others. This "judeocracy" may help alleviate an overcrowded docket but will, in the long run, also do away with our need for the courts and we will exchange our adversarial system for unreasoned judicial arbitration. Ultimately the cost to the republic may be untold as the courts become of less value and disputes would be increasingly settled without the rule of law .

CONCLUSION

There is increasing concern and consensus that judicial management must carefully control discretion and preserve impartiality.[12] Judicial involvement in all phases of litigation should in no way

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[11] Resnick J., Managerial Judges, 96 Harv.L.Rev. 376,380 (1982)

[12] Wall, Rude & Schiller, JUDICIAL PARTICIPATION IN SETTLEMENT, 1984 Mo.J.Disp.Resol. 25,41

lead to a suggestion that the judge is anything less than an impartial umpire in a battle between adversaries.[13]

The conduct of the trial judge is a textbook case of improper judicial management, not as claimed by a disgruntled litigant, but as warned and predicted by the legal scholars quoted. He fit into their shoe verbatim. The unusual relief , if granted, would be an appropriately open and necessary means by which this Court could actively demonstrate its concern for judicial quality.

The concern for improving the quality of the health care product, by protecting the right of physicians to take part in constructive criticism, is also of overdue importance. Granting relief would be an equally appropriate method for this Court to acknowledge support of this concept in attempts at improving the quality of the medical services product.

The twelve year intensive efforts of the defendants to avoid trial and the persistence efforts of the plaintiff to reach a jury illustrates the intense competition between medical politics and medical substance . It is prayed the scale will be balanced.

Respectfully submitted
Richard Bolt MD
Amelia Island, Fl.

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[13] Riskin & Westbrook, DISPUTE RESOLUTION & LAWYERS, WEST Publishing Co., 1987